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existence of a contract, was unwilling to conclude that the principal was by the writing deprived of his right of disposal. To escape the necessity of ruling on the partial performance point, it may well be that the words in question were construed so as to deny recovery to the plaintiff whether there was a contract or not.

**REAL PROPERTY—PROFITS A PRENDRE—EXTINGUISHMENT BY NON-USER.**—The owner of a farm conveyed part thereof, consisting of a slate quarry, to the plaintiff's predecessor in title, reserving to himself, his heirs and assigns, the right to take waste slate, when quarried, from the lot conveyed. The remainder of the farm was conveyed to the defendant's predecessor in title, who subsequently also acquired the right to remove the waste slate. Neither the defendant nor his predecessors in title had exercised their right for over thirty-three years. *Held*, two judges dissenting, that the right had been extinguished by abandonment. *Mathews Slate Co. v. Advance Industrial S. Co.* (App. Div. 3rd Dept. 1918) 172 N. Y. Supp. 830.

Where an easement or profit has been created by deed, the courts have generally held that mere non-user will not extinguish the right, *Welsh v. Taylor* (1892) 134 N. Y. 450, 31 N. E. 896; *Bombaugh v. Miller* (1876) 82 Pa. 203; *Arnold v. Stevens* (1839) 41 Mass. 106; such non-user serving only as evidence of intention to abandon. *Pratt v. Sweetser* (1878) 68 Me. 344; *Jamaica Pond Aqueduct v. Chandler* (1876) 121 Mass. 3. Some courts admit the general rule, but make a distinction between rights acquired by grant and those acquired by prescription, and suggest that in the latter case the right may be destroyed by non-user alone. *Pope v. O'Hara* (1872) 48 N. Y. 446, 452; *Hayford v. Spokesfield* (1868) 100 Mass. 491, 494. There seems little justification for this distinction, and the same rule should be applied in either case. *Pratt v. Sweetser*, *supra*; see *Veghte v. Raritan Water Power Co.* (1868) 19 N. J. Eq. 142, 156; *Jamaica Pond Aqueduct v. Chandler*, *supra*. Furthermore, even though it is frequently stated to be the law that an easement may be destroyed by abandonment where the intention to abandon is clearly manifested by some act of the dominant owner, the courts have generally required a change of position on the part of the servient owner in reliance thereon, before they would find that there had, in fact, been an abandonment. *Snell v. Levitt* (1888) 110 N. Y. 595, 18 N. E. 370; *Vogler v. Geiss* (1879) 51 Md. 407. Logically, it is a contradiction in terms to hold that there has been an "abandonment" of a right which one is estopped to set up, and the correct rule seems to be that it is estoppel and not abandonment which defeats the right of the dominant owner. *Scott v. Moore* (1900) 98 Va. 668, 37 S. E. 342; *cf. Vogler v. Geiss*, *supra*. It is submitted, therefore, that the majority of the court in the principal case erred in finding that the right was destroyed by the defendant's non-user, in the absence of evidence of any act of the plaintiff sufficient to work an estoppel.

**STATUTES—SUMMARY PROCEEDINGS—REMEDY OF REVERSIONER AGAINST LESSEE OF LIFE TENANT.**—A life tenant leased the premises to the defendant for ten years. Two years later the life tenant died, but the defendant held over. In an action brought by the remainderman, after the giving of notice, to remove the defendant by summary proceedings, *held*, one judge dissenting, that such an action will not lie under

§ 2232, sub. 4 of the Code of Civil Procedure. *Williams v. Alt.* (App. Div. 1st Dept. 1919) 174 N. Y. Supp. 460.

Section 2232, subd. 4 of the Code, allows summary proceedings against a person "where he . . . has intruded into, or squatted upon, any real property, without the permission of the person entitled to the possession thereof, and the occupancy, thus commenced, has continued without permission from the latter". By Section 1664 of the Code, the instant defendant, holding over after the determination of his estate, is declared a trespasser. This denies the plaintiff the rights allowed a landlord against a tenant, under § 2231 of the Code, see *Fifth Ave. Shop v. Fox Steifel* (1913) 83 Misc. 127, 144 N. Y. Supp. 705, and unless allowed to proceed against the defendant as a trespasser, he is denied all rights to institute summary proceedings. Statutory construction demands that the legislative intent prevail over the mere literal sense; and that remedial statutes are to be liberally construed. 2 Lewis' Sutherland, Statutory Construction (2nd ed.) §§ 363-379, 582, 583, 589. The legislature, by declaring the defendant a trespasser, has put him in the same category as though his original entry had been without right, by intrusion, and, as against the remainderman, the occupation of the defendant is rendered unlawful from the start. The words of the Code, as suggested in the dissenting opinion, could easily bear an interpretation broad enough to include this case—the becoming a trespasser by force of the Code Section 1664 being considered an intrusion, within the meaning of the Code Section 2231. See *Bonson v. Mulligan* (1910) 198 N. Y. 23, 90 N. E. 1127; cf. *Newman v. O'Rourke* (1914) 149 N. Y. Supp. 514. To hold otherwise is to allow a trespasser to hold over without payment of rent, and force the landlord to the lengthy process of ejectment, contrary to the legislative intent. The cases cited by the court are not necessarily controlling. In *Matter of Stockwell v. Washburn* (1908) 59 Misc. 543, 111 N. Y. Supp. 413, the original entry of the tenant was by permission of the landlord, and could not be construed as unlawful against the landlord from the start and, in addition, the tenant had equitable rights under a contract for purchase. In *Lincoln Trust Co. v. Hutchinson* (1910) 65 Misc. 590, 120 N. Y. Supp. 811, the possession of the widow as against the heirs at law, who had title, was lawful for forty days, N. Y. Real Property Law § 204, so her original possession as against the heirs was lawful. There are no holdings in the state under this code section directly in point since in no other case were summary proceedings denied the plaintiff when the defendant was a trespasser against him from the very start. It is submitted that the principal decision, though justifiable as a literal interpretation of the Code, is an unnecessarily strict interpretation of it, which contravenes the legislative purpose in enacting the Code.

TRUSTS—RIGHT OF CESTUI QUE TRUST TO GIVE LIEN ON TRUST RES.—One of several *cestuis que trustent* retained the plaintiff, an attorney, who successfully preserved the trust fund from the consequences of the improper investment and inattention of the defendant, the trustee. The plaintiff had agreed with the *cestui* to look to the trust fund for compensation. Held, that since the *cestui* had a lien in equity on the trust fund for the legal expenses incurred in its preservation, she may transfer the same to the plaintiff as a retainer. *Strong v. Dutcher* (App. Div. 2nd Dept. 1919) 60 N. Y. L. J. 136.